SUPREME COURT, U. S.

FILED

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 306

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

vs.

W. TERRILL MORRIS; JUANITA D. MORRIS; JOHN HAROLD SWANSON; NANCY PAULSON, a minor; VALERY STRATTON, a minor; SAMUEL E. STRATTON; LORRAIN STRATTON; EARL B. PAULSON; GEORGIA PAULSON; PUBLIC SERVICE COMPANY, a division of Commonwealth Edison Company, a corporation,

Respondents.

REPLY BRIEF OF PETITIONER FOR WRIT OF CERTIORARI.

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May It Please The Court:

Respondents state that they fail to grasp a distinction between a divergence of opinions between two divisions of the same Appellate Court on one hand, and a divergence of opinion between two Appellate Court districts or between two Federal Courts of Appeals on the other hand.

Respondents seemingly have fallen into that ever increasing group of persons and public officials who, through such lack of understanding or concern, would unwittingly permit a "chipping away" of those basic rights and liberties long guaranteed by the Constitution of the United States.

Smith-Hurd Illinois Ann. St., Chap. 37, Sec. 46 provides:

> "The said branch courts so constituted shall be severally known as the branch of the Appellate Court within and for the districts in which they may be constituted, and all determinations, orders, judgments and decrees of said branch courts, in cases so assigned to them by said Appellate Court, shall be entered upon the records of the Appellate Court to which the branch appertains, as determinations, orders, judgments and decrees of that Appellate Court. * * *"

From this, it is clear that all decisions of each division of an Appellate Court in Illinois is the decision of that Appellate Court. To say, therefore, that Petitioner was not, in the case at bar, deprived of equal protection of the law and due process of law is mere sophistry.

Granted that the Constitution does not guarantee uniformity of judicial decisions between different Appellate Court districts within a sovereign state, it does guarantee equal protection of the law and due process of law to parties similarly situated who come before the same court. These rights were not extended to the Petitioner in the instant case. This deprivation cannot be dismissed or rationalized by saying that it was the "left hand" and not the "right hand" of the same judicial body that dealt the death blow. This would be a distinction without a difference. Such reasoning relegates the Constitution to nothing but a historical piece of paper.

Respondents cynically criticize the Petitioner's timing in raising the federal question in this cause. It should be

obvious to Respondents that one will not cry out until he senses the pain. That is the case here. Petitioner did cry out when it first became aware that its constitutional rights had been deprivated. It then sought relief from the Illinois Supreme Court by raising the federal question in its Motion to Reconsider Denial of Petition for Leave to Appeal (Petitioner's Appendix E). This was Petitioner's only available remedy because Petitioner first became cognizant of the decision in the other cause of action subsequent to its time limit for filing a petition for rehearing in the Appellate Court and subsequent to the denial of its petition to the Illinois Supreme Court for leave to Appeal. The Illinois Supreme Court, though having the federal question before it, denied Petitioner relief (Petitioner's Appendix F). The federal question was timely presented. *Great Northern R. Co.* v. *Sunburst Oil & Ref. Co.*, 77 Law. Ed. 360, 367; 287 U.S. 358.

The fact remains that Petitioner was turned away by the Illinois Second District Appellate Court when at the same time another party, similarly situated, and in an almost identical fact situation was blessed. The action or inaction of the losing party in the other cause of action will have no bearing or effect on Petitioner's rights. The deprivation of its right to equal protection of the law and due process of law has already occurred. If the state judiciary has succeeded in discriminating between insurers as to which has a cause of action, it may likewise later discriminate between individual citizens who may appear before the courts. For this reason the present cause is important not only to the Petitioner but to the citizenry in general.

The instant case does not, as Respondents would want this Honorable Court to believe, involve just a suit between an insurance company and a minor child. It involves

something much more basic and fundamental. It involves the right of free and equal access to our Courts. If this right is denied or abridged, then the slow erosion and crumbling of the bulwark of free society which is based on laws, not men, commences.

Respectfully submitted,

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